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## FISCAL IMPACT REPORT

**SPONSOR** Eichenberg **ORIGINAL DATE** 03/02/11  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Custody Level for Life Prison Sentences **SB** 519

**ANALYST** Segura

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Undetermined	Undetermined			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Correction Department (NMCD)  
Administrative Office of the Courts (AOC)  
Department of Public Defender (PDD)  
Administrative Office District Attorney (AODA)

### SUMMARY

Senate Bill 519 proposes adding a new section to the Corrections Act to mandate NMCD to house inmates sentenced to life imprisonment without the possibility of parole or release in its most restrictive custody and at the highest security level.

### FISCAL IMPLICATIONS

Senate Bill does not contain an appropriation. According to NMCD enactment of the bill would have minimal or no fiscal impact during the relevant three year period, but is likely to have a fiscal impact in subsequent years.

### SIGNIFICANT ISSUES

The New Mexico Correction Department raises the following issues:

- Senate Bill 519 proposes to deem these life sentence prisoners as posing the greatest risk to the security of the institution and the safety of others. However, these prisoners are not all going to pose a great risk to the institution or the safety of others, and NMCD needs to maintain its discretion and authority to assess the

risks posed by these prisoners on a case by case basis. While some of these life sentence prisoners might pose a great risk initially, they are often not going to pose such a risk after 10, 15, or 20 years.

- NMCD has many life sentence inmates eligible for parole after 30 years, who behave and perform well in prison, and are able to progress through NMCD's incentive-based level system into the general population where they engage in congregate activities with other inmates without causing any problems or disturbances.
- It would encourage these life sentence inmates to cause disruptions and harm staff and other inmates because it would remove any incentive for these inmates to behave and progress into lower custody levels and the general population.
- Senate Bill 519 takes what often turns out to be a well behaving inmate and increases the likelihood that he will instead become a dangerous, highly disruptive inmate who is more expensive and labor intensive to house and supervise.

The Administrative Office of the District Attorney notes the following:

Restrictive custody in and of itself does not constitute a violation of 8<sup>th</sup> Amendment right to be free from cruel and unusual punishment. See, *In re Long Term Administrative Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 471-472 (C.A.4 (S.C.) 1999). The inmates complain that they are confined to their cells for twenty-three hours per day without radio or television, that they receive only five hours of exercise per week, and that they may not participate in prison work, school, or study programs. These conditions are indeed restrictive, but the restrictive nature of high-security incarceration does not alone constitute cruel and unusual punishment. To make out a violation of the 8<sup>th</sup> Amendment, the inmates, "must show both (1) a serious deprivation of a basic human need; and (2) deliberate indifference to prison conditions on the part of prison officials." This inquiry has objective and subjective prongs; the Five Percenters' claim founders on both of them.

## **OTHER SUBSTANTIVE ISSUES**

The NMCD state that the bill appears to violate the separation of powers doctrine contained in the New Mexico Constitution by significantly infringing upon the executive power and discretion to operate and manage its prisons and prisoners.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to NMCD, continue to allow NMCD to use its trained, experienced personnel to assess the risk of and classify individual inmates on a case-by-case basis utilizing classification tools and techniques developed and refined by corrections experts and consultants.

RS/bym